



*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

VALLEY REGIONAL OFFICE

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
MONOFLO INTERNATIONAL, INC.  
FOR  
MONOFLO INTERNATIONAL  
Unpermitted Discharge**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Monoflo International, Inc. regarding the Monoflo International facility in Winchester, VA for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Facility" or "Plant" means the Monoflo International facility located at 882 Baker Lane, Winchester, Virginia.
8. "Monoflo" means Monoflo International, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Monoflo is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge

or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

13. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. “Va. Code” means the Code of Virginia (1950), as amended.
17. “VAC” means the Virginia Administrative Code.
18. “VPDES” means Virginia Pollutant Discharge Elimination System.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Monoflo owns and operates the Facility, which houses tanks used to apply fabric softener to repurposed recycled plastic products.
2. On June 14, 2019, DEQ received notification from the Frederick County Fire Department that process wastewater containing fabric softener had been discharged from the Facility into an unnamed tributary to Adams Creek, turning the water in the stream a milky color.
3. The Facility started up its process at the end of March/early April in 2019 and the discharge resulted from routine draining of process water containing fabric softener from the Facility, which occurred every two to three weeks.
4. On June 17, 2019, the Frederick County Fire Department advised DEQ staff that the discharge was ceased by the Facility on June 14, 2019. In an email sent to DEQ on July 16, 2019, Monoflo estimated the quantity of the discharge at 13,188 gallons.
5. Monoflo does not have permit coverage from DEQ authorizing the discharge.
6. On June 27, 2019, Monoflo emailed DEQ explaining that it had shut down Facility operations, the drain had been capped off, and the Facility would not resume operations until it had found a solution to the problem resulting in the discharge.

7. On July 3, 2019, DEQ issued Notice of Violation No. 2019-VRO-0017 for the unpermitted discharge.
8. On January 7, 2020, Monoflo provided a status update via email indicating that it had connected new plastic recycling operations in the Facility to the sanitary sewer and installed an oil water separator (OWS) in the line that ties the Facility into the sanitary sewer. The email also indicated Monoflo's plan to restart the Facility's recycling operations on the week of January 13, 2020. On February 24, 2020 DEQ observed the newly installed OWS and the culvert where the unpermitted discharge occurred. There were no observed long term impacts from the discharge.
9. On February 17, 2021, Monoflo provided to DEQ in an email that approximately 9 gallons of fabric softener was purchased between March/early April 2019 and June 14, 2019.
10. The unnamed tributary to Adams Creek is located in the Opequon Creek - Shenandoah River Basin. Adams Creek and Opequon Creek are listed in DEQ's 305(b) report as impaired for aquatic life (benthics). The unnamed tributary to Adams Creek is unassessed.
11. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
12. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
14. The Department has issued no permits or certificates to Monoflo for the discharge described above.
15. The unnamed tributary to Adams Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
16. Based on the notification from the Frederick County Fire Department, the emails from Monoflo, and DEQ's February 24, 2020 inspection, the Board concludes that Monoflo has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging process wastewater from the Facility without permit coverage, as described above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Monoflo International, Inc. and Monoflo International, Inc. agrees to pay a civil charge of

\$26,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Monoflo shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Monoflo shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Monoflo for good cause shown by Monoflo, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2019-VRO-0017 dated July 3, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Monoflo admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Monoflo consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Monoflo declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Monoflo to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Monoflo shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Monoflo shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Monoflo shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Monoflo. Nevertheless, Monoflo agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after Monoflo has completed all of the requirements of the Order;

- b. Monoflo petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Monoflo.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Monoflo from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Monoflo and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Monoflo certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Monoflo to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Monoflo.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Monoflo voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Amy T. Owens, Regional Director  
Department of Environmental Quality

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Monoflo International, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/24/2021 By: [Signature], President  
(Person) (Title)  
Monoflo International, Inc.

Commonwealth of Virginia  
City/County of Federick

The foregoing document was signed and acknowledged before me this 24<sup>th</sup> day of February, 2021, by Henning Rader who is President of Monoflo International, Inc. on behalf of the corporation.

[Signature]  
Notary Public

7561286  
Registration No.

My commission expires: 9-30-21

Notary seal:

